

Internal Revenue Service

District
Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date: **AUG 14 1990**

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE I

[REDACTED]

Your Articles of Incorporation indicate your purpose is to provide support for the development of gymnastics. Page 2 of application 1023 lists the following purposes:

1. To cover competition/clinic fees for competitive gymnastics team members;
2. To cover coaches' expenses for competitions/clinics; and
3. To cover expenses for hosting competitions/clinics at a rented facility.

Paragraph E of your By-Laws indicates a financial obligation to cover competition expenses of each gymnast will be set at the beginning of each competitive season. Each gymnast will be required to meet this responsibility through fund raising activities provided by the booster club. Once this obligation is met, the option becomes available to credit any additional monies earned to future obligations.

The intent of your organization, as stated in your application, is to financially support the [REDACTED] gymnastics team. You do this through the purchase of supplies and equipment for use by the competitors and the gym. Your support helps in financing the competition entry fees and coaches fees for competitive meets and clinics, awards, and programs for competition. [REDACTED]

[REDACTED] is a for-profit corporation in the commercial business of offering gymnastics classes to the public for a fee.

In addition to sponsoring team events, your Club also sponsors several gymnastics demonstrations each year at local schools and community events. These events are designed to encourage children to become interested in the sport of gymnastics and to show basic safety techniques. They also have the effect of encouraging students to register for classes at [REDACTED].

To support its activities, you run several fund-raising events each year. These include concessions and admissions at home gymnastics meets, sponsorship program, sales of candy, and a letter campaign to area businesses and friends.

Section 501(c)(3) of the Code provides, in part, for the exemption of organizations which are both organized and operated exclusively for charitable purposes no part of the earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations states that an organization will be regarded as operated exclusively for one or

more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(ii) of the Regulations states that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest. Private interests include designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly by such private interests.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines "charitable" according to its generally accepted legal sense which includes the education of children and combatting juvenile delinquency. Under certain circumstances, "charitable" can also include the promotion of amateur athletics.

Revenue Ruling 69-175, 1969-1 C.B. 149, concluded that an organization, organized and controlled by the parents of children attending an exempt private school, to provide bus transportation to and from school was not exempt under section 501(c)(3) of the Code. The revenue ruling reasoned that the parents were providing themselves a cooperative service that enabled them to fulfill their individual responsibility of transporting their children to school. Consequently, the organization was serving private interests.

Revenue Ruling 65-2, 1965-1 C.B. 227, held that an organization which was organized and operated to teach a particular sport to community children by providing free instruction, free equipment and free facilities qualified for exemption under section 501(c)(3). The organization provided instruction in schools, playgrounds and parks, encouraged participation in tournaments, and arranged for attendance of players and instructors at state community who wanted to participate, were physically able and met the age requirements. The organization had the charitable purposes of educating the public, and combatting juvenile delinquency which lessened the burdens of government.

Revenue Ruling 80-215, 1980-2 C.B. 174, held that an organization which was formed to develop, promote and regulate a sport for persons under 18 years of age by organizing competition, promulgating rules, organizing officials and presenting seminars for players, coaches, and referees was exempt under section 501(c)(3). The activities of the organization prevented juvenile delinquency and were educational.

Revenue Ruling 65-2 and Revenue Ruling 80-215 indicate that

organizations which promote sports for children are educational and combat juvenile delinquency under section 501(c)(3) of the Code. Although you facilitate the competition of children under 18, you are precluded from exemption under section 501(c)(3) because your activities provide a private benefit to member parents and to [REDACTED].

The reason you were created and your method of operation indicate that you are made up primarily of a group of parents who have joined together to work cooperatively to provide funds to pay for the participation of their children in athletic events. The expenses incurred by these children would otherwise have been paid by the parents. All parents of competitive team members must be members of your Club and must work at fund-raisers to receive a benefit. You pay no benefits to non-members.

In addition, you provide a private benefit to [REDACTED], a for-profit entity. By paying for transportation of coaches who are regular employees of [REDACTED] and by providing equipment to the center without charge you are covering expenses that would otherwise have been paid by the center or directly by the team members. You also promote the center by promoting its gymnastic program. Enabling the team to compete in meets at other gyms, hosting meets at the center, and conducting community demonstrations both at the gym and in rented facilities and malls helps to create and enhance the reputation of the center and encourage others to take classes there.

You are an organization created and controlled by parents who are providing themselves a cooperative service which enables them to fulfill their responsibility to their children in a manner similar to the organization described in Revenue Ruling 69-175. The organization in that ruling met the member parents' responsibility to transport their children to school, and you meet the member parents' responsibility to pay the fees for their children's gymnastic competition. Consequently, the holding of that revenue ruling would apply to you. You are therefore not exempt because you are serving the private interest of your members and [REDACTED] rather than public interests.